

# **Human Rights Violations based on Sexual Orientation and Gender Identity**

## **LGBT Equality Caucus**

Testimony presented by Ariel Herrera, director, LGBT human rights  
Amnesty International USA  
June 23, 2008

Co-chairs Congresswoman Baldwin, Congressman Frank, and distinguished members of the LGBT Equality Caucus, I thank you for this important opportunity for Amnesty International to share our concerns about human rights violations based on sexual orientation and gender identity happening around the world. I would also like to thank my colleague Mark Bromley and Congresswoman Baldwin and Congressman Frank staff for making it all happen.

### **Introduction**

In many parts of the world, homosexuality is still considered a sin or an illness, a social deviation, perversion, or a betrayal of one's culture. Government officials may deny that "homosexuals" exist in their country at the same time that they openly defend throwing them in jail or executing them. In fact, human rights violations against lesbian, gay, bisexual and transgender (LGBT) people are often passionately defended in the name of culture, religion, morality or public health – and legally sanctioned. Gay people are branded as pedophiles. AIDS labeled as a "gay plague," a "punishment from God." Homosexuality, "the white man's disease." Same-sex relations as "unChristian," "unAfrican," "unIslamic."

Some governments seek to deny LGBT people their humanity, calling them "less than human."<sup>1</sup> And if LGBT people are "less than human," how can they have human rights? The lessons of history, of course, tell us that the denial of a person's basic humanity is the first step towards atrocities against stigmatized groups in society.

Around the world, LGBT people face widespread discrimination, harassment and violence. People are tortured, imprisoned or executed by their own government simply for engaging in homosexual acts. Those suspected of being LGBT are also routinely targeted for harassment and violence. And many of those who speak up for LGBT rights, regardless of their sexual orientation or gender identity, are often persecuted with impunity.

---

<sup>1</sup> President Robert Mugabe of Zimbabwe, 1995.

Amnesty International believes that all people, regardless of their sexual orientation or gender identity, are entitled to the full range of human rights enshrined in the Universal Declaration of Human Rights, and that governments have an obligation to protect and promote these fundamental rights for all. Amnesty International considers people imprisoned solely because of their sexual orientation or gender identity to be prisoners of conscience.

Amnesty International has been researching and documenting abuses based on sexual orientation and gender identity for more than a decade, as part of its work to defend the human rights of all people. The following is a brief summary of Amnesty International's key LGBT issue areas of concern and documentation.

### **Criminalization: Sodomy laws and other discriminatory legislations**

Homosexuality is still criminalized in over 80 countries – punishment can include flogging, incarceration and in about a dozen jurisdictions, the death penalty. At the 2003 session of the Commission on Human Rights, the resolution on the question of the death penalty was adopted by a recorded vote of 24 votes to 18, with 10 abstentions.<sup>2</sup> The resolution urged all States that still maintain the death penalty: “To ensure that the notion of *most serious crimes* does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, non-violent religious practice or expression of conscience and sexual relations between consenting adults.”<sup>3</sup>

- In Saudi Arabia, men convicted of homosexuality have been flogged, and in some cases beheaded.
- On 4 December 2007, Makwan Moloudzadeh was hanged at Kermanshah Central Prison. He had been sentenced to death in July 2007 for *lavat-e iqabi* (anal sex) in connection with the alleged rape of three boys in about 1999, when Moloudzadeh was aged 13. His trial, held in the western cities of Kermanshah and Paveh, was grossly flawed. The alleged victims withdrew their accusations in the course of the trial, and reportedly said they had either lied or had been forced to “confess.” In sentencing Moloudzadeh to death, the judge relied on his “knowledge” of the case, as is allowed by Iranian law, deciding that Moloudzadeh could be tried as an adult, and that the alleged offense, otherwise unproven, had taken place. The sentence was confirmed by the Supreme Court about a

---

<sup>2</sup> Commission on Human Rights, Report on the 59th Session. (17 March-24 April 2003). Economic And Social Council. Official Records, 2003. Supplement No.3. E/2003/23,E/CN.4/2003/135, 1 October 2003. 2003/67. The question of the death penalty.

<sup>3</sup> *Ibid.*, para.4(d), emphasis added.

month later. His lawyer sought a judicial review of the case, and in November, the Head of the Judiciary, Ayatollah Shahroudi, granted a temporary stay of execution pending a further review of the case. On or around 1 December this review appears to have found no fault with the verdict and sentence, and Makwan Moloudzadeh's was executed. His lawyer was not given advance notice of his client's execution, although this is required by Iranian law.

Laws criminalizing homosexuality serve as legal sanction to dehumanize and discriminate against LGBT people. Retaining laws which treat LGBT people as criminals lends support to a climate of prejudice which increases the risk of abuses against people perceived to be LGBT. In places where sodomy statutes are not actively enforced, they are often used to harass, intimidate or blackmail LGBT people. Laws that criminalize same-sex sexual conduct between consenting adults in private violate the rights to privacy, freedom from discrimination, freedom of expression and association, and other human rights protected under international law.

- On 8 September 2006, the Ugandan newspaper Red Pepper published a list of 13 women they claim are lesbians. Homosexuality is a criminal offence in Uganda, and Amnesty International believes that making such allegations against these women may put them in danger. This is the third instance in recent weeks of Red Pepper openly and specifically harassing lesbian, gay, bisexual and transgender (LGBT) people. On 8 August, the newspaper published a similar list of names of men it claimed were gay. On 7 September, Red Pepper ran an article naming and picturing another man, supposedly wanted by police for engaging in “homosexuality activities [sic].” Following the publication of the list of men on 8 August, Amnesty International received several reports of harassment of LGBT people who had been named. Some reported being harassed by colleagues, while others were ostracized by relatives. The naming of those accused of being lesbian or gay adds to a pattern of abuse against the rights of LGBT people in Uganda. Amnesty International is concerned that the criminalization of homosexuality, as provided for in the Ugandan Penal Code, is providing the legal grounds on which these abuses are allowed to happen.
- In Cameroon, where sexual relations between two people of the same sex is illegal, authorities continually arrest and detain men on suspicion of engaging in homosexual conduct which are violations of the Cameroonian Penal code. Between 19 July and 1 September 2007, 11 men were arrested in various places in the cities in Douala and Yaoundé. The year before, in June 2006, 6 men and a 17-year-old youth were found guilty of “sodomy” and sentenced to ten-month jail terms after already having spent a year in detention. While in prison, the men faced harsh conditions and homophobic attacks from fellow prisoners. One of the men, Alim Mongoche, died of AIDS-related

complications shortly after his conviction, exacerbated by the harsh conditions of detention.

- On 10 December 2007, six men were convicted of “practising homosexuality” in a trial held in the city of Ksar El Kebir, Morocco. One of them, also convicted of selling alcohol illegally, was sentenced to ten months’ imprisonment, three others to six months’ imprisonment, and two to four months. They were arrested at the end of November after public denunciations that a private party they had held was a “gay marriage.” A video of the party, which was circulated in Morocco and on the internet, sparked angry demonstrations in Ksar el Kebir and calls for the men to be punished. The video, which was played at the trial, does not appear to show the same-sex relations the men were accused of. The six men were tried according to Article 489 of the Moroccan Penal Code, which penalizes “lewd or unnatural acts with persons of the same sex.”

Although, laws forbidding homosexual relations are often defended in the name of local cultural values, such laws, in many Caribbean countries and others, are in fact, a colonial legacy.

In some countries without laws prohibiting homosexuality, LGBT people are often persecuted under broadly defined statutes criminalizing “debauchery” or “offenses against morality or public decency.” Other countries have discriminatory age-of-consent legislations and laws banning the “promotion” of homosexuality which can be used to imprison LGBT human rights defenders.

- In Egypt, Cairo police have jailed 12 men since October 2007 in a spreading hunt for people suspected of being HIV-positive. Medical doctors forced all detainees to have HIV tests and undergo forensic anal examinations to “prove” they had sex with other men. Several of the men reported being beaten by police while in detention. Those prisoners who tested positive for HIV were held in hospitals, chained to their beds, for months. A prosecutor told one of the men who tested positive, “People like you should be burnt alive. You do not deserve to live.” In a similar government crackdown in 2001-2003, AI and other human rights organizations documented arrests of over a hundred men rounded up by police in the streets or their private homes. Similarly, the men were convicted of “habitual debauchery” and “contempt of religion” and sentenced to years in prison and hard labor. Many of the accused reported being tortured during the earlier period of their detention.

### **Torture and Ill-treatment**

Torture and other cruel, inhuman or degrading treatment are prohibited under international human rights law. Yet in countries all over the world, LGBT people are being tortured or ill-treated by state officials, or with their acquiescence. LGBT people are targeted not only because of their political beliefs or activism, but on account of their very identities. Defiance of heterosexual norms can provoke moral condemnation, exclusion and violence, including torture. LGBT activists are seen as threatening the social order. Gay men are considered traitors to masculine privilege for adopting “feminine roles.” Transgender people call into question traditional assumptions on gender norms.

Inflammatory and homophobic public statements by government leaders serve as incitement to torture or ill-treatment of LGBT people. For example, on 15 May 2008, Gambian President Jammeh threatened to “cut off the heads” of gay people in his country if they do not follow his orders to leave. Torture and ill-treatment by state actors, however, are only the tip of the iceberg. For many LGBT people, the most common experience of violence will be in their homes, schools, places of work or on the streets. Torture is part of a broader spectrum of violence, fueled by prejudice and sustained by impunity.

- In Indonesia, on 22 January 2007, intruders beat, kicked, verbally abused and forced two gay men outside their home to confront a larger group of people who continued to abuse them. The police eventually came and took the two men to the Banda Raya police station, where the officers subjected them to further abuse. The police allegedly forced the men to strip naked, perform sexual acts in front of everyone and hosed them down with cold water. They were held in a cramped cell where they suffered further abuse by other detainees. The two men were released in the morning after being subjected to a long interrogation that culminated with signing agreements that they would not further engage in “homosexual acts.”
- On 30 July 2007, Ayu, a male-to-female transsexual, was seriously beaten by state religious officials who detained her while she was talking to friends at the Old Melaka bus station in Kota Melaka, southwest Malaysia. Ayu was reportedly approached by three enforcement officers from the Melaka Islamic Religious Affairs Department (*Jabatan Agama Islam Melaka*, JAIM), a local government body tasked with enforcing social norms based on Sharia law. The officials, all dressed in civilian clothes, reportedly punched and kicked Ayu when they detained her. Abuses against transsexual people appear to be rising in Malaysia at the hands of both the ordinary police and so-called ‘religious police’ like JAIM. There are fears that such actions may be creating a climate of vigilantism among community groups and society at large against those whose sexuality or gender identity is perceived to deviate from the “norm.” In April 2007, it was reported that the authorities in Terengganu state were planning to set up a “rehabilitation centre” for transsexual people due to fears that men were becoming more “effeminate”

and that many transsexual people were “back to their old habit” even after serving time in prison.

- On 8 April 2007, a crowd reportedly surrounded a church in Mandeville and hurled different objects through a window at the back of the church. The attacks were directed at persons in attendance of the funeral being held there, who the crowd believed to be homosexual. On 2 April 2007, another crowd reportedly threw stones and bottles at a group of costumed men who were dancing in the carnival procession along Gloucester Avenue in Montego Bay. According to reports, the crowd was angered because the men were supposedly gyrating in a sexually suggestive manner and demanded that they leave the stage. According to eye-witnesses, the men were attacked, chased and beaten by the mob of around 30 or 40 people. At least one of them had to be hospitalized due to injuries. These two incidents occurred only two months after a group of men were targeted in a similar manner in a pharmacy in Tropical Plaza, Half-Way Tree, in Kingston. A human rights defender told Amnesty International that a mob of at least 200 people had gathered outside the store, calling for the men to be beaten to death because they were homosexual.
- In October 2007, two men have been sentenced by a court in al-Baha in southwestern Saudi Arabia to 7,000 lashes each for sexual intercourse. Flogging is mandatory in Saudi Arabia for a number of offences, including sexual offences, and can also be used at the discretion of judges as an alternative or addition to other punishments. Sentences can range from dozens to thousands of lashes, and are usually carried out in instalments, at intervals ranging from two weeks to one month. In commenting on corporal punishments like flogging, the Special Rapporteur on Torture stated that "corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment." The imposition of large numbers of lashes as in these cases is in particular violation of the prohibition of torture. The prohibition of torture and cruel, inhuman and degrading treatment or punishment is absolute under international law.

### **Extrajudicial, Summary or Arbitrary Execution**

Extrajudicial executions are deliberate and unlawful killings by, or with the consent of, the state. They are prohibited by international law but Amnesty International’s documentation reveals a deadly problem in countries around the world. EJE are often perpetrated by shadowy “death squads” acting as covert arms of the state, with official approval. Their targets include political opponents of the ruling government, members of racial or ethnic minorities, or others considered “undesirables.” In many countries, LGBT people, often considered “dispensable,” have proved to be convenient scapegoat for a range of social ills, such as a deteriorating economy, a perceived

breakdown of the family, or a rise in crime. In Colombia, for example, gay men and transgendered people have become a common target of police-backed “social cleansing” operations against those considered “social undesirables,” such as sex workers and drug addicts. When LGBT people become targets for such operations, their killing provokes little or no public outrage.

- According to a number of media reports on the escalating sectarian violence in Iraq, individuals thought to be gay are among those who have been singled out, attacked, and in some cases killed because of what the perpetrators consider their “immoral behavior.” Alleged perpetrators include militias and members of the Iraqi security forces - such as the Wold Brigade, a special police unit which reports to Iraq’s Interior Ministry, and which has been accused of other abuses including detention and torture of Palestinian residents in Baghdad.

### **Arbitrary Arrest and Detention**

LGBT people, particularly human rights defenders, are often targeted for harassment and subjected to arbitrary arrest and detention by local authorities and law enforcement officials. Once in detention, LGBT people are at serious risks for physical and sexual abuse. Laws criminalizing homosexuality and those broadly defined statutes criminalizing “debauchery” or “offenses against morality or public decency” are often used by government agents to harass, intimidate and to target LGBT people, or those suspected of being LGBT, for arbitrary arrest and detention. In many cases, those who fall victim to such abuses are not able to speak out for fear of further abuse if their sexual orientation is made public. They may also feel that their protest might bring down the wrath of those who harmed them.

- On 18 March 2007, LGBT rights activist Donny Reyes was reportedly arbitrarily detained by police in Comayagüela in Honduras. Reyes is the treasurer of "Asociacion Arcoiris" (Rainbow Association), an LGBT rights group which was set up in 2003 to train human rights defenders and promote HIV/AIDS prevention. At about 3 a.m., on 18 March, Reyes walked out of the Arcoiris offices to stand with a colleague while she waited for a taxi. Moments later, six police officers in two police cars stopped next to them and asked for identification. Reyes' colleague had none with her, but the police officers were only interested in him. He showed them his ID card but they told him to get into the car. He refused and began to argue, saying that he had done nothing wrong. After a few moments they allegedly began beating him and forced him to get into the car. They abused him, saying, among other things, "a estos maricones hay que desaparecerlos de aqui" ("we have to disappear these queers from here"). The officers took him to a police station where they left him in a cell for over six hours, where other detainees repeatedly



raped and beat him, allegedly encouraged by a police officer. Donny Reyes has lodged a formal complaint about this. Since then police appear to have attempted to intimidate him.

- On 20 May 2008, two transgender individuals were dancing at Capital Pub in Kampala, Uganda, when they were detained by club bouncers, harassed and beaten while being asked whether they were men or women, and “accused” of being homosexuals. The club management of Capital Pub called the police, who detained both individuals for four days at Kabalagala Police station. During their detention, both were repeatedly beaten by police officers, and one was kissed, fondled and forcefully propositioned for sex by other detainees, and stripped and had their genitals groped by a police officer. One of the two was denied medical treatment for diabetes, and allowed only one meal a day. After their release on bond, both individuals were charged with public nuisance, and are currently awaiting trial. Since their release, both individuals have faced harassment and violent attacks from individuals in their neighborhood who were informed by police of their gender identity. These started with threats and escalated to a serious violent attack on the night of 3 June in Old Kampala, where a group of youths attacked both individuals.

### **Freedom of Association and Assembly**

In a number of countries, mainly in Eastern Europe, participants in pride events too often face threats and official hostility even before they march. They are jeered, spat at, and pummeled with bottles, eggs, excrement, and fists by protesters, sometimes while police look on. In a number of East European countries, some events are banned outright, in violation of international law. Authorities breach their obligations claiming security concerns and the violation of what they perceive as spiritual and moral values.

The rights to freedom of expression, peaceful assembly and association are recognized in numerous human rights treaties, including the International Covenant on Civil and Political Rights<sup>4</sup> (ICPPR) and the European Convention for Human Rights and Fundamental Freedoms<sup>5</sup> (ECHR). Although the rights to freedom of expression, peaceful assembly and association are not absolute rights, any interference with these rights has to be prescribed by law, and be necessary and proportionate to meet a legitimate aim under international law. According to international human rights law, freedom of expression, peaceful assembly and association should not be restricted or prohibited simply on the grounds that something might shock, offend or

---

<sup>4</sup> International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 23 March 1976, in accordance with Article 49.

<sup>5</sup> Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11. Rome, 4 November 1950.



disturb. Therefore, a peaceful assembly may not be restricted merely on the grounds that it might offend an individual or group. Moreover, states have an obligation to protect the right to peaceful assembly even if a peaceful gathering may attract violent counter-demonstrations. Banning LGBT marches on security grounds based on the fact that there will be substantial amounts of counter-demonstrators is therefore contrary to international law.

- In Moldova in April 2007, for the third year in a row Chişinău City Hall denied permission to the organization Gender Doc-M to hold a gay pride march. This decision was made despite a Supreme Court ruling in February that a similar refusal in April 2006 had been illegal. On 11 May, 60 would-be participants sought to travel to the Moldovan capital in defiance of the ban on pride march – the sixth time such a ban had been imposed. There, at least three times as many protesters surrounded their bus, forced open the doors, and seized their banners and flags while police watched from half a dozen patrol cars parked nearby.
- In Russia in May 2007, Moscow mayor Yuri Luzhkov banned a gay rights march in Moscow. Gay rights activists, including several members of the European Parliament, were briefly detained when they attempted to hand over a petition to Yuri Luzhkov, urging him to respect the right to freedom of expression and protesting against his decision to ban a gay rights march from taking place in Moscow.
- In Latvia in 2006, a Gay Pride march in Riga was banned owing to what the authorities referred to as "security threats." Alternative events that took place instead of the Gay Pride march were interrupted by violent protests. In 2007, a Gay Pride march was allowed to go ahead, but inside an enclosed park. Outside the park, crowds of counter-demonstrators shouted abuse at the Gay Pride marchers and threw two explosive devices which exploded in the park. On 22 November 2007, the UN Committee Against Torture issued its Concluding Observations on Latvia expressing its concern at reports of acts of violence and discrimination against LGBT people. The Committee recommended that Latvia intensify its efforts to combat discrimination against and ill-treatment of LGBT people.
- In May 2007, the mayor of Vilnius refused to give permission for an EU-sponsored anti-discrimination truck tour as part of a "For Diversity. Against Discrimination" information campaign to make its planned stop in the capital of Lithuania. The Vilnius City Council also voted unanimously to ban a tolerance campaign rally in support of human rights of various groups, including the rights of LGBT people, citing "security reasons."
- On 7 July 2007, Budapest police failed to protect LGBT participants from attacks by counter-demonstrators during and after the Pride March. A few hundred counter-

demonstrators reportedly harassed the participants along the route of the Pride March, from Heroes' Square to the Freedom Bridge, throwing eggs, bottles, and Molotov cocktails at them, and threatening their security and physical integrity. According to reports received by Amnesty International several individuals were injured. The police were present during the Pride March, but allegedly did not take any action to disperse the violent counter-demonstrators, in breach of the Hungarian Act on assembly. According to information published by organizations, including witnesses' testimonies, police officers responded to calls for help with what could be characterized as discriminatory and victim-blaming attitude. An activist who called the police was told that "she chose to participate in the event therefore she should take its consequences."

- In Croatia in July 2007, participants in Zagreb Pride were attacked physically and verbally by counter-demonstrators. Reportedly, as a result of the attacks two participants required hospitalization, while 12 others suffered minor injuries. In some cases, police authorities reportedly failed to adequately respond to homophobic attacks.

### **Human Rights Defenders**

Those defending the rights of LGBT people, regardless of their sexual orientation or gender identity, are at particular risks of persecution and marginalization. In a 2001 report, the Special Representative to the Secretary General on Human Rights Defenders, Hina Jilani, notes: "Of special importance will be women's human rights groups and those who are active on issues of sexuality, especially sexual orientation and reproductive rights. These groups are often very vulnerable to prejudice, to marginalization and public repudiation, not only by State forces but by other social actors."<sup>6</sup>

Human rights defenders have a right to the protection of the state, like any other citizen. Governments should ensure that human rights defenders are not prosecuted for exercising their rights to freedom of expression, association and assembly. But in many countries, human rights defenders routinely face obstacles, including prosecution by the state under various forms of legislation. Human rights defenders have also been subjected to threats and intimidation, surveillance, restrictions on freedom of movement, imprisonment and killings.

- On 4 June 2008, three LGBT human rights defenders were arbitrarily arrested after a group of seven activists from Sexual Minorities Uganda (SMUG) distributed a press release to people attending the HIV/AIDS Implementers' Meeting at the Imperial Royal Hotel in Kampala. The press release and an accompanying report outlined their

---

<sup>6</sup> Report of the Special Representative of the Secretary General on Human Rights Defenders, E/CN.4/2001/94, para.89(g).

organization's call for HIV prevention programs for the LGBT community in Uganda. The three activists were arrested by police officers at the hotel, including one who was reportedly a participant in the meeting.

- On 29 May 2008, the Third Civil Court of First Instance in the Beyoglu district of Istanbul ruled in favor of a complaint brought by the Istanbul Governor's Office, and ordered the closing of Lambda Istanbul, a group that has been advocating for the rights of LGBT people for the past ten years. The complaint, made in early 2007, claimed that the name and objectives of the group were offensive to Turkish "moral values and its family structure." In July 2007, the local Prosecutor's Office rejected the complaint, but the Governor's Office took the case to the courts. The court conducted six hearings before issuing its verdict. Turkish authorities have targeted other LGBT organizations in recent years. In September 2005, the Ankara Governor's Office accused the Ankara-based group KAOS-GL of "establishing an organization that is against the laws and principles of morality." Similarly, the Ankara Governor's Office attempted in July 2006 to close the human rights group Pembe Hayat (Pink Life), which works with transgender people, claiming that the association opposed "morality and family structure." In both cases, prosecutors dropped the charges. Lambda Istanbul will not be closed down until a final decision by the Supreme Court of Appeals. The group intends to fight the ban.
- Members of *Asociación Entre Amigos*, including the organization's director, William Hernández, have repeatedly received death threats and are apparently under surveillance. This may be an attempt to halt the organization's work on behalf of LGBT people in El Salvador. The organization has reported seven raids on their offices during the last five years. Although in all cases the incidents have been reported to the authorities, investigations into the incidents have proved superficial, and nobody has been brought to justice.

### **Human Rights Refugees/Asylum**

In the absence of effective protection against serious human rights abuses against them, many LGBT people are forced to flee their country in search of physical safety. However, despite the protection of international law and the recognition by the UN High Commissioner for Refugees that lesbians and gay men did comprise a "particular social group" that should be granted refugee status under the UN Refugee Convention, LGBT people face serious obstacles in claiming asylum and having their claims recognized.

In some countries of asylum, LGBT people risk facing the same or similar persecution that they fled from if their sexual orientation were to become known. In others, their claims are often

wrongly denied. In cases where a LGBT person may not have expressed their sexual orientation openly in the past, decision-makers would often say that they should be able to keep their sexual orientation from the attention of those authorities and private individuals from whom they otherwise would be at risk. This interpretation of whether or not someone has a well-founded fear of persecution contradicts a well-established principle of interpretation of the 1951 Convention relating to the Status of Refugees. In cases where someone claims a well-founded fear of persecution because of their political opinion or religious beliefs they would not be required to refrain from expressing their opinions or beliefs in the future. The same principle should be upheld to protect the rights of people to express their sexual orientation.

- In March 2007, eighteen-year-old Anatole Zali was at imminent risk of being forcibly returned to Cameroon by the Swiss authorities. Zali claimed asylum at Zurich airport, but his claim was rejected on 14 February. Under current asylum legislation in Switzerland asylum-seekers are not granted state-funded legal assistance. Consequently, Zali had to submit his own appeal against the rejection of his asylum claim, without legal representation. He was given only five days in which to submit his appeal, in accordance with Swiss asylum procedures. His appeal was rejected. Anatole Zali arrived in Switzerland from Cameroon on 3 February 2008 and claimed asylum on the grounds that he had been threatened because of his sexual orientation. In Cameroon, Zali claims to have received threats from the police, initially in Yaounde, the capital, and then in the city of Douala, where he stayed with his (male) cousin for protection. His cousin was later arrested by the police on suspicion of being gay, and an arrest warrant on the same grounds was issued for Zali. Zali fled to Switzerland to escape arrest. The Cameroonian Penal Code criminalizes homosexuality. According to Section 347 bis of the Cameroonian Penal Code, "Whoever has sexual relations with a person of his/her sex shall be punished with imprisonment for from six months to five years and with a fine of from 20,000 to 200,000 francs [approximately US \$35 to US \$350]." Reports suggest that those detained or imprisoned in Cameroon because of their alleged sexual orientation have been targeted for ill-treatment in custody. They are often subjected to verbal and physical threats from other inmates. Cameroon's prisons are characterized by overcrowding, poor sanitation and inadequate food. Following international pressure, including by Amnesty International members, the Migration Office agreed to reconsider Anatole Zali's asylum claim, on the basis that he had not had access to a fair and satisfactory asylum procedure.

### **USA: Police Brutality**

The United States, like many countries, has a long history of both criminalizing homosexuality and failing to protect LGBT people against violence and discrimination. In the past three decades

the LGBT rights movement has made significant progress in promoting greater recognition of the rights of LGBT people in the US and in confronting human rights abuses by law enforcement officers. Police departments have increasingly been held to account for their treatment of LGBT people. Anti-discrimination legislation at the local level has greatly facilitated this and many police forces provide some level of training about working with LGBT people.

However, AI's 2005 report, *Stonewalled: Police abuse and misconduct against lesbian, gay, bisexual and transgender people in US*, shows how serious police abuses, including gender-based violence – against women and men – sometimes amounting to torture and ill-treatment, persist. The report strongly suggests that transgender people, people of color, young people, immigrants and sex workers within the LGBT community are at a heightened risk of being targeted for abuse.

AI's *Stonewalled* report reveals a widespread pattern of police brutality. LGBT individuals are subject to abuses ranging from sexually explicit, abusive language and threats, to beatings and rape, and the use of excessive force during arrest.

Transgender and gender variant people, in particular, are subjected to humiliating and unnecessary searches and detained inappropriately in gender segregated cells where they are at risk of assault and sexual violence by other detainees. AI also documented physical and sexual abuses of detainees by police and corrections officers.

AI found that police response to crimes against LGBT people is often inadequate and sometimes hostile. Because of this, LGBT people often fear reporting crime. In cases of domestic violence involving same-sex partners, reports to AI indicate that police often fail to respond adequately or respond inappropriately. AI heard reports of officers not taking seriously incidents of domestic violence, threatening to arrest both parties, or relying on racial and gender stereotypes when identifying the abuser.

AI's findings strongly indicate a pattern of discriminatory enforcement by officials of “zero tolerance” and “quality of life” ordinances and morals regulations, such as “lewd conduct” statutes, against members of LGBT communities. AI also found a strong pattern of transgender women being profiled as sex workers, often leading to arbitrary arrest and detention.

AI found that even for serious abuses, officers are seldom held accountable, creating a culture of impunity. Barriers to accountability include hostility or indifference at police stations; retaliation by officers against LGBT individuals who have reported police misconduct; and inadequate or excessively complex complaint procedures.

- On 31 May 2007, several armed plain-clothed police officers from the Markham Police Department (MPD) forced their way into Frankie Brown's home. The officers found Brown, a gay, African-American man aged 47, in the bathroom and forced him to lie face down on the floor while they pointed assault rifles at his head. Brown, who was reportedly terrified as the officers had not identified themselves, was then handcuffed, dragged into an adjacent room, and forced to sit on a chair while the officers searched his house. The officers then moved Brown to the doorway of his house, still handcuffed and seated in the chair and proceeded to display a photograph of Brown with male relatives and a friend, along with a gay pornographic video they had found in the house. The officers then shone a spotlight on Brown and made degrading comments that he had had sexual relations with the people in the photograph to Brown's neighbors, who were gathered around his house. Brown sat in this position, handcuffed to the chair, underneath a spotlight on him for over an hour. The police officers, after finding HIV/AIDS medication in Brown's medicine cabinet, informed Brown's neighbors that Brown was HIV positive. Several hours later, Brown was taken, still handcuffed to Markham police station, from where he was released the following evening without charges. Throughout the raid, the officers allegedly made extremely offensive and derogatory statements about Brown's sexual orientation.
- In June 2007, two lesbians, Debra Sciortino and Kelly Fuery were driving home from a Gay Pride event when an off-duty Chicago Police Department (CPD) officer forced their car onto the hard shoulder of the motorway after Fuery beeped her car horn at him for driving slowly. According to the women's testimony, the CPD officer pointed a gun at them, physically assaulted them, used homophobic language and knocked them into the path of traffic during the altercation. Nicole Tomaskovic, who was passing at the time and stopped to try to help, claims the police officer held her in a chokehold around her neck. All three women were treated in hospital for the injuries they had sustained.
- Christina Sforza, a transgender woman, told Amnesty International how she was attacked in a New York restaurant in July 2006 by a man wielding a lead pipe. She said she was attacked for spending too long in the women's rest room which an employee gave her permission to use. The assailant shouted verbal abuse that was picked up by other staff and customers who allegedly egged him on shouting "kill the fag." Christina Sforza says that when officers from the New York Police Department arrived they refused to allow the emergency medical services to examine her injuries and arrested her, instead of her attacker. The police reportedly put her injured arm behind her back, handcuffed her, kicked her and pushed her into their car. Christina Sforza tried repeatedly to file a criminal complaint with the police against the man who beat her in the restaurant. She told Amnesty International that the last time she tried, she was threatened with arrest for attempting to make a false report.

- Mariah Lopez, a young transgender Latina woman, was arrested by New York Police Department officers on 17 June 2006. While she was in police custody male officers reportedly carried out repeated humiliating and unnecessary strip searches. She told Amnesty International that when she refused to go into the men's cell because she feared for her safety, police officers handcuffed her, tied her legs together, and dragged her into the cell. Once she was in the cell the officers allegedly beat her, hit her in the back of the head, pushed her face against the floor and kicked her in the genitals. She said that she pleaded guilty to charges of "loitering with intent to solicit" and with "assaulting officers" in order to get out of jail where she felt she was at serious risk of attack and could no longer endure the psychological and emotional pressures of conditions in detention.
- Alexander Ruppert, a gay man, alleges that in June 2006, he was abused by Chicago Police Department officers who were escorting him from a bar following a disturbance. According to his testimony, the police officers punched and kicked him, and made offensive comments about his sexual orientation, then filed false reports to cover their abuse. He was taken to a hospital following the altercation and received 16 stitches to his left eye and treatment for other injuries, including a fractured nose. Ruppert alleges that while in police custody, he was given no water, food and pain medication for two days, and claims that the only water he had to drink was the water from the toilet in his cell.

## **Conclusion**

In every region of the world, LGBT lives are circumscribed by a web of laws and social practices that deny them equal rights to life, liberty, physical security, as well as other fundamental rights, such as freedom of association, freedom of expression, and rights to employment, education and health care. While the degree to which discrimination is institutionalized varies from country to country, almost nowhere are LGBT people treated as fully equal before the law.

Much of Amnesty International's research has clearly demonstrated that discrimination, the systematic denial of rights to certain people, is a grave human rights abuse, and often, can lead to further human rights abuses. Institutionalized discrimination dehumanizes its victim, who is deemed as someone who can be treated inhumanely. Institutionalized discrimination feeds impunity, denies justice, and can invite violence against targeted people or social groups. Discriminatory policies and practices have tremendous consequences for targeted social groups not only in terms of the nature of their ill-treatment from government agents or society at large, but also in terms of their access to redress and equal protection under the law. Discrimination



often leads to lack of official action, such as investigations into alleged abuses, thus, further reinforcing impunity.

In countries throughout the world, LGBT people are targeted for imprisonment, torture, sometimes even murder, simply because of who they are or who they choose to love. LGBT people are subject to such persecution at the hands of private individuals or government agents. The stigma and prejudice against those whose sexual orientation or gender identity and expression do not conform to rigidly ideas about social norms means that human rights abuses perpetrated against LGBT people are often underreported or altogether ignored, much less condemned. Fear of arrest or retaliation often prevents LGBT people from making complaints against authorities. When official complaints are made, they are frequently met with indifference.

The United States has fallen behind many other countries in promoting, protecting and fulfilling LGBT human rights. Ecuador, South Africa and Fiji have incorporated LGBT non-discrimination provisions in their constitutions. Hungary, Czech Republic, Slovenia and Croatia have extended some economic benefits to same-sex partnerships. Brazil has extended social security benefits to same-sex couples since 2000. Most Western European countries, Canada and South Africa already extend marriage or civil union rights to same-sex couples. In its 2006 review of U.S. compliance with the International Covenant on Civil and Political Rights, the UN Human Rights Committee “note[d] with concern the failure to outlaw employment discrimination on the basis of sexual orientation in many states” and recommended a more comprehensive federal legislative protection.

Amnesty International is calling on the US government to take meaningful steps to advance the recognition of human rights of LGBT people not only in the US but also worldwide through its foreign policy initiatives.

### **US National Policy Recommendations**

- Recognize that discrimination against LGBT people, both in law and practice, is a key contributing factor to human rights abuses face by LGBT people.
- Secure greater legal protection for LGBT people by enacting federal non-discrimination law prohibiting all forms of discrimination based on sexual orientation or gender identity, including in basic areas of life, such as housing, employment, health services and public accommodations.

- Initiate and support public anti-discrimination campaigns to raise awareness of the need to protect the rights of all people, including LGBT people.
- Ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC).
- Withdraw reservations to the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
- Fully implement requirements under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and fully cooperate with relevant international monitoring bodies on the implementation of measures taken against racism.

### **US Foreign Policy Recommendations**

- Condemn all violations of internationally recognized human rights norms based on sexual orientation or gender identity.
- Condemn all forms of violence against women, including based on sexual orientation or gender identity.
- Recognize the protection of sexual orientation and gender identity as fully embedded in human rights norms set forth in international law, including the international conventions to which the United States is a party.
- Affirm that human rights abuses based on sexual orientation and gender identity should be punished without discrimination and classified as crimes, and that such violations should be given the same consideration and concern as human rights abuses based on other grounds.
- Work to effectively advance the protection and promotion of the human rights of LGBT people within the United Nations and other international governmental bodies.
- Ensure that the Department of State continue to improve its documentation of human rights abuses on the basis of sexual orientation and gender identity, to give such violations the same consideration and concern as all other human rights abuses, and to develop a comprehensive strategy to combat such abuses abroad.